

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICHAEL JOHN MCLEOD, *et al.*,

Plaintiffs,

v.

VALVE CORPORATION, *et al.*,

Defendants.

CASE NO. C16-1227 JCC

ORDER DENYING DEFENDANTS'
MOTION FOR ATTORNEY FEES

This matter comes before the Court on Defendants CSGO Lotto, Inc. and Trevor A. Martin's motion for attorney fees (Dkt. No. 41). Having thoroughly considered the parties' briefing and the relevant record, the Court finds oral argument unnecessary and hereby DENIES the motion for the reasons explained herein.

I. BACKGROUND

Plaintiffs filed a complaint alleging that Defendant Valve Corporation, through its video game *Counter Strike Global Offensive* (CSGO), "allowed an illegal online gambling market" through "its Steam platform." (Dkt. No. 11 at ¶¶ 3, 21.) Plaintiffs alleged that Mr. Martin, a Defendant and the owner of CSGO Lotto, "actively promote[d] Lotto as a gambling service" through his YouTube channel, which "generate[d] excitement." (*Id.* at ¶¶ 13, 26, 153.) The amended complaint alleged ten different statutory and common law violations, some including dozens of individual state law violations, but contained only one federal claim: violations of the

1 Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1962. (*Id.* at 66.)

2 Defendants CSGO Lotto and Mr. Martin, both Florida residents, filed a motion to dismiss
3 the first amended complaint pursuant to Federal Rule of Civil Procedure 12(b) for lack of
4 personal jurisdiction, lack of subject matter jurisdiction, and failure to state a claim. (Dkt. No.
5 19.) The Court dismissed the RICO claim with prejudice for failure to state a claim upon which
6 relief could be granted and declined to exercise supplemental jurisdiction over the remaining
7 state law claims. (Dkt. No. 38.) CSGO Lotto and Mr. Martin now move for attorney fees
8 expended defending this lawsuit. (Dkt. No. 41.)

9 **II. DISCUSSION**

10 Pursuant to Washington Revised Code section 4.28.185(5),

11 In the event the defendant is personally served outside the state on causes of
12 action enumerated in this section, and prevails in the action, there may be taxed
13 and allowed to the defendant as part of the costs of defending the action a
reasonable amount to be fixed by the court as attorneys' fees.

14 Courts regularly explain the rule as authorizing a fee award for a party who "prevails" by
15 obtaining a jurisdictional dismissal. *See Scott Fetzer Co., Kirby Co. Div. v. Weeks*, 786 P.2d 265,
16 267–68 (Wash. 1990) (*Fetzer I*). One purpose of the statute is to "compensate defendants for the
17 added expense caused them by plaintiffs' assertions of long-arm jurisdiction." *Id.* at 272. Other
18 purposes of the statute include encouraging the full exercise of state jurisdiction and preventing
19 plaintiffs from harassing defendants by hauling them into Washington courts based on frivolous
20 jurisdictional grounds. *See Scott Fetzer Co. v. Weeks*, 859 P.2d 1210, 1215 (Wash. 1993) (*Fetzer*
21 *II*); *Fetzer I*, 786 P.2d at 272 n.6. The Ninth Circuit has recognized in an unpublished case that
22 where a district court declines to exercise supplemental jurisdiction over state law claims, it is
23 appropriate to decline to award fees on causes of action it has not reviewed. *See Molski v. Foster*
24 *Freeze Paso Robles*, 267 Fed. App'x 631, 633 (9th Cir. Feb. 20, 2008). Ultimately, the decision
25 to award attorney fees under section 4.28.185(5) is within the trial court's sound discretion.
26 *Amazon.com, Inc. v. Kalaydjian*, 2001 WL 1892190, at *1 (W.D. Wash. Mar. 27, 2001).

1 In *Perkumpulan Investor Crisis Center Dressel--WBG v. Wong*, 2014 WL 3738629
2 (W.D. Wash. July 29, 2014), this Court denied motions for attorney fees based on very similar
3 facts. Plaintiffs in *Perkumpulan* filed a complaint alleging one federal RICO claim and numerous
4 state claims. *Id.* at *1. The Court dismissed the RICO claim with prejudice and declined to
5 exercise supplemental jurisdiction over the state law claims. *Id.* Defendants in *Perkumplan* then
6 filed a motion for attorney fees pursuant to section 4.28.185(5). *Id.* This Court concluded that
7 although defendants had prevailed in the action, there was no finding of bad faith, especially in
8 light of the fact that the state law claims had not been reviewed. *Id.* at *4.

9 Here, the parties do not dispute that Defendants prevailed on their motion to dismiss.
10 The Court agrees that for purposes of this attorney fee request, Defendants prevailed by
11 obtaining a jurisdictional dismissal due to an ultimate lack of subject matter jurisdiction.
12 However, regardless of whether Defendants are deemed the prevailing party for purposes of
13 section 4.28.185(5), such a conclusion would only mean that the Court could award fees, not that
14 Defendants are necessarily entitled to such an award because of Plaintiffs' alleged bad faith. *See*
15 *Perkumpulan*, 2014 WL 3738629, at *4.

16 Defendants argue that Plaintiffs' claims were not brought in good faith because the
17 Defendants' "contacts with the forum state are particularly lacking." (Dkt. No. 41 at 7.)
18 Defendants allege that only two Plaintiffs and one Defendant are Washington citizens. (*Id.* at 8.)
19 Defendants also claim that the case was not brought in good faith because "[a]fter filing three
20 previous and identical class-action lawsuits in other federal courts across the country, Plaintiffs
21 voluntarily dismissed these suits and filed a case in Washington, more than 3,000 miles from
22 Lotto's and Martin's Florida domicile." (Dkt. No. 44 at 6.) Plaintiffs counter that although the
23 Court dismissed the sole federal claim for failure to state a claim upon which relief can be
24 granted, "a state court may present the appropriate forum for the remaining state law claims and
25 [the dismissal] did not make Plaintiffs' invocation of federal jurisdiction frivolous or in bad
26 faith." (Dkt. No. 43 at 6.)


1 The Court concludes that because it had no occasion to reach Defendants' motion to
2 dismiss the state claims on a substantive basis, it cannot say that Plaintiffs' decision to bring
3 Defendants into this lawsuit was frivolous, made in bad faith, or meant to harass. Although
4 Plaintiffs brought similar federal cases in different jurisdictions, the fact the cases were
5 voluntarily dismissed does not necessarily mean that this Washington case was brought on
6 frivolous jurisdictional grounds. Moreover, where a district court declines to exercise
7 supplemental jurisdiction over state law claims, it is appropriate to decline to award fees on
8 causes of action it has not reviewed. *See Molski*, 267 Fed. App'x at 633. Therefore, Defendants'
9 motion for fees is DENIED.

10 **III. CONCLUSION**

11 For the foregoing reasons, Defendants CSGO Lotto Inc. and Trevor A. Martin's motion
12 for attorney fees (Dkt. No. 41) is DENIED.

13 DATED this 22nd day of November 2016.

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John C. Coughenour
UNITED STATES DISTRICT JUDGE